ARTICULABLE SUSPICION

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KIM ROBERTS PROMOTED TO CAPTAIN

Kimberly Roberts of the PSTC staff was recently promoted from Lieutenant to Captain and made Bureau Chief of the Basic Training Bureau. She replaced Captain Thomas Walsh, who moved to the administrative office staff as Chief of the Special Services Bureau, according to Director Keith H. Lohmann.

Captain Roberts came to the Council from the Exeter Police Department, where she had risen through the ranks from Patrol Officer to Detective Sergeant. She was on staff for the Police Academy and assisted with Corrections Academy #69. In the summer of 2002, she assumed the responsibilities of Commandant of the Corrections Academy. Upon the retirement of Captain Charles Hemp, she also took over Investigative Training for the agency. Recently, Captain Roberts was transferred from the Corrections Academy to the post of Commandant of the NH Police Academy, making her the first female Commandant in the Academy's 43-year history. Congratulations, Captain Roberts!

JILL MORAN JOINS THE PSTC STAFF

Director Keith H. Lohmann announces the hiring of Jill M. Moran as Commandant of the Corrections Academy with the rank of Lieutenant. Lt. Moran comes to PSTC from the NH Department of Corrections where she was employed for nine years, having attained the rank of Sergeant. She worked at the NH State Prison for Women, and in the summer of 2002 was appointed to the DOC Training Bureau, assisting with the Corrections Academy and DOC in-service training. Lt. Moran is a graduate of Hesser College, and also NH Corrections Academy #50 and the 238th PSTC Part-Time Officer School. Welcome, Lt. Moran!

COURT DATES NEEDED ON ADMINISTRATIVE LICENSE SUSPENSION (ALS) WITHDRAWALS

By: Earl M. Sweeney
Assistant Commissioner
Department of Safety

Administrative rule Saf-C 2803.07 allows the law enforcement officer, under specific conditions, to withdraw sworn reports requesting administrative hearings and submitted pursuant to RSA 265:91-a, thus requesting that the Department of Safety take no action against the defendant's license. These conditions are summarized as follows:

- Sworn reports may be withdrawn within 30 days from date of service, or
- after 30 days if there was an error of law.

The current rule is quoted below*, and while it is silent on the requirement for a court date, the Department of Safety cannot process these requests without two vital pieces of information – the court date, and whether or not the DWI or other underlying charge has been dropped.

Why is the Court Date Important and Necessary?

The department must determine whether or not to restore licensing privileges upon receipt of the withdrawal. For example:

Jane Q. Public's ALS is going into effect on April 25, 2004, and the officer files a timely withdrawal on Friday, April 23rd, but there is no court date provided.

So, does the Hearings Bureau cancel out the suspension and restore the license? Absent the court date, the Bureau does not know how to proceed. Should the law enforcement withdrawal trigger a license restoration? For example, if Jane was convicted of the DWI or reduced underlying charge that resulted in a **court imposed** license revocation on Monday, April 19th, **no** restoration should take place. Instead, the database will be updated to reflect a withdrawal of the ALS **when** the court conviction is processed.

However, if the court date comes after the withdrawal and Jane is not suspended/revoked for other reasons, then her privileges need to be restored.

If a court date has not been set, the agency needs to know that as well. Simply advise us that the court has not yet set a date.

Also, if the DWI or reduced underlying charge is going away, tell us so we know what to do. If you have questions, call the Hearings Bureau at 271-2486 or 271-3486. For your convenience, the applicable rule is given below.

*Saf-C 2803.07 Withdrawal of Sworn Report

(a) A sworn report may be withdrawn for 30 days from the date of service specified in RSA 265:91-a, III & IV.

(b) After 30 days from the date of service specified in RSA 265:91-a, III and IV, the sworn report shall not be withdrawn unless the law enforcement agency made an error of law.

(c) All requests for withdrawals submitted pursuant to (b) above shall:

(1) Be submitted in writing to the Bureau of Hearings, 33 Hazen Drive, Concord, NH 03305; and

(2) Contain a detailed explanation of the error of law.

(d) The hearings examiner shall review the request for withdrawal in (c) above to determine whether an error of law was made. If the examiner finds that an error of law exists, the sworn report shall be dismissed. If the examiner finds that no error of law exists, the request for withdrawal shall be denied.

IN A NUTSHELL, REMEMBER TO PROVIDE THE COURT DATE!!!!!!!!!!!!!!

NEW HAMPSHIRE POPULATION GROWS; MAY BE SHIFTING NORTHWARD

The U.S. Bureau of the Census now estimates the Granite State's population at 1,287,687, an increase of 51,900 people, or 4.2%, from April 2000 to July 2003. The biggest growth in number of people was in Hillsborough County, which added 13,822 people to reach 394,633, a 3.6% increase.

However, it was a surprise that the biggest percentage growth occurred in Belknap County, which grew by 4,031 residents to a total of 60,356, an increase of a whopping 7.2%. This is the fastest that county has ever grown. The biggest increases were in Alton, Barnstead, and Meredith. Neighboring Carroll County grew by 5.7% during the same time period.

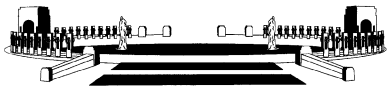
Every five years, the state is growing fast enough to fill another city the size of Nashua, or "adding another Laconia every year", according to the Office of State Planning.

The only county to lose population was Coos County, with a net loss of 92 residents, or 0.03% over the three years, probably due to the paper mill shutdowns. The other three counties bordering the Connecticut River, Grafton, Sullivan, and Cheshire, lagged in growth. All told, the "golden triangle" of Hillsborough, Rockingham and Merrimack Counties added 33,962 people and accounted for 65% of all the new residents. Nearly two-thirds of the state's residents–828,387 people–live in those three counties, which constitute only one-sixth of the state's land area.

MEMORIAL DAY

The National War World II Memorial in Washington, D.C., will be dedicated on May 29, 2004, the start of the Memorial Day weekend. The four-day dedication observance will include a WWII-themed exhibition on the National Mall, a memorial service at the Washington National Cathedral, and an entertainment salute to the WWII veterans from the armed services performing units. This memorial is to honor the 16 million Americans who served in the armed forces, the 400,000 who died, and the millions who supported the war effort on the homefront.

The memorial was authorized by Congress in 1993. More than 400 different memorial designs were considered, but the one envisioned by Austrian architect Friedrich St. Florian was selected. Construction began in 2001. The memorial consists of a wide plaza with granite columns and arches, as well as a pool and bronze sculptures. It is located between the Washington Monument and the Lincoln Memorial, making it the only monument on the Mall's central axis dedicated to a 20th century event. The National Park Service anticipates that 3.5 million people will visit the memorial annually.



NOTES FROM NOBLE DRIVE

The New Hampshire Supreme Court recently decided the following cases of interest to law enforcement:

TAKING OF MULTIPLE BLOOD SAMPLES UPHELD

In *State v. Shirley Ann Stern*, decided April 5, 2004, the Supreme Court unanimously upheld the conviction of a subject for negligent homicide and aggravated DWI, from whom multiple blood samples had been

taken, some with and some without benefit of a search warrant.

Stern's elderly mother was riding with her daughter in Durham one evening at 9:30 p.m., when the vehicle rolled over on its side headed the wrong way in a lane, and trapped the two women in the car. There were no skidmarks and no debris at the scene. The weather was clear and the road was dry. Arriving police officers found the woman tending to her mother, whose arm was pinned underneath the vehicle.

Both women were extricated and brought to Exeter Hospital. One officer was sent to the hospital and told to obtain a blood sample from the driver. At the hospital, he noted that Stern was thick-tongued, her speech was slurred, she frequently mumbled, and her breath had the odor of alcoholic beverages. She was having mood swings, sometimes quiet, sometimes crying and screaming, and sometimes speaking to nobody in particular. She was told that she must give an alcohol sample. At the officer's direction, the hospital staff drew a blood sample at 11:10 p.m. The officer reported this to the Deputy Chief by phone, and was ordered to place her under arrest for aggravated DWI and obtain another blood sample. Stern consented to the second sample, which was drawn at 12:44 a.m. Subsequently, an HGN test was administered, and it was noted that Stern's eyes were watery and she still smelled of alcohol. This was reported to the Deputy Chief, who then called a Detective and told him to draft an application for a search warrant for further blood samples. The warrant was issued at 1:15 a.m., and pursuant to the warrant, the hospital staff drew two more blood samples, at 1:55 a.m. and 2:55 a.m., respectively. The defendant's mother subsequently died.

At a pretrial hearing, the defense counsel asked to have all four of the blood samples suppressed under the exclusionary rule. The presiding judge ruled that the first sample should be suppressed because it was not taken under the Implied Consent Law and the defendant was not told she could refuse. The defense argued that the second sample was fruit of the poisoned tree because after being told she could not refuse the first sample, the defendant might not have believed she could refuse the second sample. However, the judge allowed this one because he said there were exigent circumstances. He allowed the third and fourth samples because they were drawn pursuant to a valid search warrant.

Before the Supreme Court, the defendant argued that the remaining three blood samples should have been suppressed and that the judge was in error not to suppress them. The defense claimed the police had no right to take the second sample without a search warrant, and that the affidavit for the search warrant that resulted in the taking of the third and fourth samples was defective in that it contained a "material misrepresentation." He said the Detective who drew up the warrant erroneously stated that the defendant's eyes were "red and glassy" and the report from the officer who interacted with her at the hospital merely said they were "watery."

The Supreme Court agreed with the trial Court in admitting all three additional test results. They said the police had probable cause to arrest Stern at the hospital for aggravated DWI when they observed her watery eyes, the odor of alcohol, and her speech and behavior, along with the fact that the vehicle was involved in a collision. Police have the authority under the DWI statutes to arrest a DWI on the grounds of a medical facility if probable cause exists and the subject is not arrested at the scene. They also upheld the taking of the blood, on condition that there was probable cause plus exigent circumstances to justify it. Probable cause to search exists when a person of ordinary caution would be justified in believing that what is sought will be found in the place to be searched and is either contraband, fruits or implements of the crime, or will aid in apprehension and conviction, *State v. Canelo*, 139 NH 376 (1995).

The warrantless taking of blood from a person under arrest without consent is constitutional when exigent circumstances plus probable cause exist, *State v. Berry*, 121 NH 324 (1981); *State v. Wong*, 125 NH 610 (1984), *State v. MacElman*, 149 NH 797, *Schmerber v. California*, 384 US 757 (1966). Exigent circumstances exist when the delay caused by obtaining a search warrant would create a substantial threat of imminent danger to life or public safety or the likelihood that evidence will be destroyed by a delay, *State v. Santana*, 133 NH 798 (1991). Exigent circumstances means situations in which officers will be unable or unlikely to make an arrest, search or seizure for which there is probable cause, unless they act swiftly and without seeking a warrant, *State v. Graca*, 142 NH 670 (1988).

Alcohol is metabolized or chemically changed by blood so as to render the BAC diminished or undetectable by the passage of time, *State v. Wong*, supra, *State v. Schnieder*, 124 NH 242 (1983). Any significant delay in taking a blood sample may deprive the State of reliable evidence of the driver's condition at the time s/he drove the vehicle, *State v. Leary*, 133 NH 46 (1990). It is common knowledge that warrants and other legal documents are considerably more difficult to obtain at night than during working hours, *State v. Schneider*, supra. Given that the crash occurred in the late evening when obtaining a warrant is more difficult, the trial Court did not err in ruling that there were

exigent circumstances surrounding the obtaining of the second sample.

Turning its attention to the defendant's allegation of material error in the search warrant affidavit (the affiant said Stern's eyes were "red and glassy" rather than just "watery"), the High Court said that even if this misstatement was material, it was not recklessly or intentionally made. A misrepresentation is reckless when the affiant had no reasonable grounds to believe it was true, *State v. Spero*, 117 NH 199 (1977). Here, the Detective who drafted the affidavit relied on a characterization over the phone by the Deputy Chief of what the officer at the hospital had told the Deputy. An officer is allowed to rely on information given to him or her by another officer, *State v. Jaroma*, 137 NH 148 (1993), and this gave him a reasonable basis to believe the defendant had red and glassy eyes.

The defendant also argued that the affidavit was defective because it failed to allege that Stern caused the crash. The Court ruled that the affidavit contained sufficient information from which a reasonable and prudent person would conclude that it was more probable than not that Stern caused the crash.

Stern also tried to claim that the affidavit was defective because it did not forewarn the issuing judge that the police had already obtained two blood samples. The Court ruled that because the affidavit said the police were seeking "two additional blood samples", it sufficiently alerted the issuing justice that the police already had blood samples from the defendant.

"COMPETING HARMS" MAY HAVE JUSTIFIED DWI

In *State v. Laurent L'Heureux*, decided on April 23, 2004, a unanimous Supreme Court vacated the defendant's conviction and sentence for DWI and ordered the District Court of Southern Carroll County to apply a new legal standard as to whether or not to consider his claim that competing harms justified his driving with a BAC of 0.11.

The defendant had flagged down a Moultonborough PD cruiser he met on the highway while driving toward the police station to report a criminal threatening case. The officer not only called two other officers to investigate the case, but when he discovered that L'Heureux's breath smelled of alcoholic beverage, his speech was slurred, and his eyes were bloodshot and glassy, he also arrested him for DWI. At trial, L'Heureux tried to defend himself against the charge by raising the justification of competing harms under RSA 625:3. He said he was fleeing a place where he had been visiting because a neighbor, whom his host had described as "a nasty person", had appeared at the cottage with a rifle.

L'Heureux had been partying with his girlfriend at a Lake Winnipesaukee cottage that his friend claimed to have bought at a cheap price, partly because of the peculiar neighbor. There were many other houses in the neighborhood, which was crowded with visitors because it was July 4th. L'Heureux had some drinks at the party and described himself as the least intoxicated person there. Suddenly during dinner, the next door neighbor appeared on the porch of the cottage where L'Heureux was visiting, and she was brandishing an automatic weapon and threatening to shoot the host's dog. She then retreated to her house nearby, carrying the rifle.

L'Heureux said he was frightened for the safety of everyone at the cottage and urged the owner to call the police, but he refused, saying it would only agitate the neighbor more. The host then went over to talk with the neighbor's husband, who promised to calm her down. Still concerned over the incident, L'Heureux went to his girlfriend's car to retrieve his cell phone and tried to call the police, but his host came out and grabbed the phone out of his hand and urged him not to call. L'Heureux then announced that he would not stay at the house as planned, and asked the host to call a taxi for him. The host called three different taxi services, but each company was overbooked and said they could not come for several hours. L'Heureux then took his girlfriend's keys and headed for the Moultonborough Police Station, which he remembered passing on the way in. When he flashed his lights to attract the attention of a patrolling cruiser, he got more of a response than he had bargained for, and was arrested on the DWI charge.

When the defendant raised the competing harms justification at trial, claiming that he committed one harm – driving after drinking – to avoid an even greater harm – perhaps he and others being shot by the neighbor – the District Court Judge refused to allow him to make this claim, saying that there were other houses in the neighborhood and he had not therefore "exhausted all other alternatives" before resorting to driving a car in his condition. This appeal to the Supreme Court followed.

The competing harms justification in our Criminal Code replaced the old common law defense of "necessity." The Supreme Court several years ago in *State v. O'Brien*, 132 NH 587 (1989) upheld the conviction of a pharmacist who was arrested after responding to his drug store when the police called him to report that someone had burglarized the place. O'Brien claimed he drove while drunk to avoid the larger possible harm of someone gaining access to controlled drugs. In the *O'Brien* case, the Supreme Court laid down a three-part test for a successful plea of competing harms: (1) The otherwise illegal conduct must have been believed

by the defendant to be urgently necessary. (2) There must have been no lawful alternative to the conduct. (3) The harm sought to be avoided must outweigh, according to the ordinary standards of reasonableness, the harm sought to be prevented by the violated statute. The conduct is only justifiable if it is urgently necessary to avoid a clear and imminent danger, must be limited to acts directed to the prevention of harm that is reasonably certain to occur rather than to foreclose acts of purely speculative and uncertain danger, and is not available when lawful alternatives exist that will cause less, if any, harm. The present harm sought to be avoided must be balanced against the harm that the statute violated sought to prevent. Once the defense has been established, the burden shifts to the prosecution to prove beyond a reasonable doubt that the harm caused by violating the statute was not conduct believed by the defendant to be necessary to avoid harm to himself/herself or another, where the perceived harm outweighs the harm the statute seeks to prevent.

Borrowing from a decision in another state, *Andrews v. People*, 800 P.2d. 607 (Colorado 1990), the Supreme Court has now added another "what if" to the mix. They say that in order for a legal alternative to violating the law being available, it must be a **reasonable** alternative. The Carroll County court, in deciding that there were "**lawful** alternatives" available to L'Heureux instead of driving from the cottage, applied the wrong test, the Supreme Court said. Instead, the lower court should have determined if there were other **reasonable** lawful alternatives available. Therefore, they have vacated the conviction and sentence and remanded the case back to the District Court to apply what they call the "correct legal standard" and then decide whether to allow the defendant to raise his justification and shift the burden to the State.

HIGHWAY FUND IS SACROSANCT UNDER THE STATE CONSTITUTION

The State's Highway Fund, which is derived from gasoline and diesel fuel taxes and motor vehicle registration and driver license fees, is used primarily to support the construction, maintenance and reconstruction of roads by the State DOT, patrol of highways by the State Police, and the operation of the Motor Vehicle Division. Part II, Article 6-A of the State Constitution, enacted in 1938, dedicated this fund and says it can be used for no other purpose than something related to the highways.

In *NH Motor Transport Association v. State of New Hampshire*, decided April 19, 2004, the Supreme Court unanimously upheld the integrity of this dedicated fund, and ruled that the state was wrong in allowing some of it to go towards the Nashua Commuter Rail Project under the theory that a better passenger rail system in the state would relieve traffic congestion. The Motor Transport Association, the lobbying organization that represents the state's trucking companies, brought suit against the state because of this diversion of funds.

The Supreme Court not only upheld the truckers, but also ordered that the state must pay their expenses in bringing the suit, because "the public interest in preserving constitutional rights against governmental infringement is paramount."

BREAK IN TIME "UN-TAINTED THE FRUIT OF THE POISONOUS TREE"

In *State v. Allen Belton*, decided April 19, 2004, a unanimous Supreme Court upheld Belton's conviction of armed robbery, despite a confession that flowed from a first illegal interrogation, because of the lapse of time and the different circumstances under which the second interview took place.

Belton robbed a bank in Salem and fled on foot toward Methuen, MA with $14,000 in stolen money. Believing Belton might be a suspect in the robbery, a Methuen officer went to his home to question him about his recent activities. Belton consented to let the officer search his home, and the officer seized a pair of white athletic shoes that matched the description of the bank robber's footwear. Belton was arrested and the next morning, confessed to the crime.

A jury trial was held and of three eyewitnesses, two testified they had selected Belton's picture from a photo lineup, whereas the third said she was unable to identify the robber in the photo array, but she did identify Belton in court as the robber. The defense challenged this because the prosecution had failed to notify them in advance that this witness had not made a positive ID from the photo array. The Supreme Court said the failure to disclose this evidence was inadvertent and the evidence did not tend to prove the defendant's innocence because the witness testified and was subject to cross-examination in court, where she told the jury she did not make an ID from the photo array. And, although the police report did not mention that she had failed to make an ID from the photo array, her written statement, which was forwarded to the defense with the copy of the police report, did. The late disclosure therefore did not prejudice the defendant's case.

State Police Criminalist Melissa Staples testified about DNA evidence she had analyzed from a nylon mask worn by the bank robber, and compared to Belton's

DNA. The defense challenged her testimony as an expert witness. The Supreme Court upheld her testimony.

To determine whether the defendant's confession should be suppressed, the Court applied the four-part test in *State v. Gotsch*, 143 NH 88 (1998), cert denied, 525 US 1164 (1999). The test in deciding if the act of giving the statement is sufficiently an act of free will so as to break the causal connection between the first illegal police act and the second confession is as follows: Were *Miranda* warnings given? How close in time were the arrest and the confession? Were there sufficient intervening circumstances between the arrest and the confession? What was the purpose and flagrancy of the official misconduct?

Less than an hour after the bank was robbed, Methuen police arrived at Belton's home, saw him in the yard, handcuffed him, and then questioned him about his "recent activities." He then consented to a search of his home, which turned up the white sneakers. Meanwhile, more police arrived and continued to interrogate him in his yard. He then agreed to go to the police station for more questioning, which took place without benefit of *Miranda* warnings. Finally, Belton told the Methuen Police he was no longer willing to cooperate with them, and he was turned loose to go home. However, he was arrested about 15 minutes later.

The next morning, Belton waived his right to extradition to New Hampshire, and was brought back over the border by Salem detectives. He was given the *Miranda* warnings and signed a waiver of rights. He then confessed to the robbery and accompanied the Salem Police while they retraced his steps after exiting the bank.

The Court said it was reasonable for the Methuen officer to handcuff Belton for his own safety when he encountered him in the yard. However, this blossomed into an illegal detention when backup officers arrived and they failed to frisk him for weapons. They could no longer justify keeping him handcuffed for their own safety and thus he was formally "seized." This rendered the search that sprung from his illegal detention inadmissable as fruits of the first illegal act. Any statements he gave on the day of the robbery were also suppressed.

However, the statement he gave to the Salem detective the day after the robbery was voluntary and admissible. It had been 24 hours since Belton's first, illegal detention, a significant lapse in time during which he could reflect on whether or not to give a statement. Also, he was given the *Miranda* warnings this time. The interrogation was by a different officer from a different department, and he had consulted with an attorney and waived extradition to New Hampshire. These intervening circumstances were sufficient, in combination with other factors, to break the causal chain between his illegal detention and his incriminating statements the following day.

MIXED ADVICE ON VEHICLE STOPS

In *State v. Joshua McKinnon-Andrews*, decided April 30, 2004, the NH Supreme Court gave mixed advice but plenty of background on the theory of vehicle stops, as Chief Justice John Broderick wrote a concurring opinion that upheld the defendant's conviction but on different grounds than those used by his colleagues. The end result was the same, however – McKinnon-Andrews was convicted of illegal possession of a narcotic drug.

Deputy Chief Frank Harris, of the NH Hospital Campus Police, was on duty in his cruiser one afternoon on the grounds of the State Office Campus in Concord where the Hospital is located, when he observed the defendant fail to stop for a posted stop sign. Chief Harris followed the defendant and put on his blue lights. McKinnon-Andrews stopped in a public parking lot near to, but not within, an area of the Hospital grounds that is restricted to no vehicles. The Chief knew that friends of Hospital patients sometimes tried to smuggle contraband to them in that area.

Once McKinnon-Andrews stopped, he immediately alighted from his car and started to walk back toward the cruiser. Chief Harris ordered him to get back in his car. The Chief said it was unusual in his experience for motorists not to wait for the officer to approach the car, instead of the other way around, and that made him suspicious. Approaching the vehicle, he asked the defendant for his license and registration. He had a NH license and a RI registration, and said that he had borrowed the car, and was on the way to the NH Department of Corrections office on the campus to pay some restitution that he owed.

Noting that it would be a roundabout route to the DOC office to head toward this restricted area, the Chief asked McKinnon-Andrews if he had anything in the vehicle the Chief should be aware of. "What, like drugs? No. You want to check?" the defendant replied quickly. Chief Harris replied that he would like to check, and the defendant immediately got out of the car. The Chief called for backup and ran a license check. Once backup arrived, he searched the vehicle and found a large, red nylon bag on the seat. When he opened the bag, he found a cigar box, and inside the cigar box was a digital scale and a plastic measuring spoon covered in white powder that, after lab tests, turned out to be cocaine.

The defendant appealed his Superior Court conviction, claiming that the Chief impermissibly expanded the scope of the stop without further articulable suspicion that there was anything wrong beyond running the stop sign. He claimed the Chief exceeded the scope and purpose of the traffic stop by asking the defendant what he might be carrying in the vehicle.

On appeal, the Supreme Court engaged in a lengthy discussion of various legal theories of vehicle stops, subsequent questioning of motorists, and consent searches of vehicles, under both the State and Federal Constitutions. They noted that the purpose of the 4th Amendment, and of Part I, Article 19 of the State Constitution, is to impose a standard of reasonableness on the exercise of discretion by government officials, to safeguard the security and privacy of individuals against arbitrary invasions, *Delaware v. Prouse*, 440 US 648 (1979). This requires balancing the governmental interest that allegedly justifies an intrusion against the extent of the intrusion on protected interests. The facts on which an intrusion is based must be measurable against an objective standard, either probable cause of some less stringent test. Even in a case where particularized suspicion would not be required, other safeguards must be present to ensure that someone's expectation of privacy is not subject to the discretion of the officer in the field. New Hampshire at long last adopted the *Katz v. US* reasonable expectation of privacy rationale in *State v. Goss*, 150 NH 46 (2003).

A traffic stop is a seizure within the meaning of the 4th Amendment, even if the purpose is limited and the length of the detention brief. A *Terry*-type temporary detention is lawful if there is articulable suspicion that the person stopped has committed, is committing, or is about to commit a crime, *State v. Wong*, 138 NH 56 (1993). When there is not probable cause, law enforcement interests have to warrant a limited intrusion on a suspect's personal security. The stop must be temporary and last no longer than necessary to effectuate its purpose, *Florida v. Royer*, 460 US 491 (1983), *State v. Glaude*, 131 NH 218 (1988). Violations such as speeding or an expired license plate will justify a stop, *State v. McBreiarty*, 142 NH 12 (1997), *Pennsylvania v. Mimms*, 434 US 106 (1997) regardless of whether or not the reason for the stop was merely a pretext to pull the vehicle over, *Whren v. U.S.*, 517 US 806 (1996).

Here, McKinnon-Andrews conceded that Chief Harris had ample reason to pull him over. What he challenged was exceeding the scope of the original stop (a stop sign violation) to ask him about the contents of his car. He claimed the reasonable seizure turned into an unreasonable one at that point.

The Supreme Court refused to set any time limit on vehicle stops, as long as the officer is pursuing a line of investigation that is supported by articulable suspicion. An officer may take whatever additional action which would warrant a person of reasonable caution under the circumstances to take, as long as the suspicion is not yet dispelled, *State v. Parker*, 125 NH 525 (1985), *State v. Maya*, 126 NH 590 (1985). It is certainly permissible to ask a stopped motorist his or her name and vehicle registration information, because that is the routine and prudent first step in an investigative stop, *State v. Hight*, 146 NH 746 (2001). Expansion of the scope of the stop to include investigation of other suspected illegal activity is constitutionally permissible only if the officer has reasonable and articulable suspicion that other illegal activity is afoot.

Various state and lower federal courts disagree about the duration of a traffic stop. Some, such as the 5th and 9th Federal Circuits contend that since police questions posed at a traffic stop are neither searches nor seizures, there is no need to justify each question asked. Others, such as the 3rd, 8th, and 10th Federal Circuits, require that the subject matter of any questions asked relate to the initial purpose of the stop or be justified by reasonable articulable suspicion of additional criminal activity, and even police questioning that does not extend the length of the stop is illegal if the questions asked go beyond the initial purpose of the stop.

In this, its first opportunity to choose between one of these two diametrically opposed legal poles, our Supreme Court carefully steered a course between them instead of choosing one over the other, saying that neither approach strikes the proper balance between law enforcement and individual interests. Giving police "unfettered discretion" to ask any questions they want at a traffic stop is overly permissive, they said. However, requiring every police inquiry to be directly related to the purpose of the stop, or to be justified by additional articulable suspicion of further wrongdoing, is unduly restrictive. Instead, our Court adopted an approach used by the Illinois Supreme Court in *People v. Gonzalez*, 789 N.E. 2d. 260 (IL 2003). The First Circuit U.S. Court of Appeals in Boston has already approved a similar approach in *U.S. v. Chhien*, 266 F. 3d. 1 (1st Cir. 2001), cert denied, 534 US 1150 (2002). They engaged in a "fact-specific inquiry" as to whether an officer's actions were "fairly responsive to the emerging tableau," rather than taking a "black and white approach."

From now on, NH courts will apply a three-part test to determine if the scope of a *Terry*-type stop has been exceeded. They will examine (1) whether the questions asked were reasonably related to the initial justification

for the stop, (2) whether the officer had articulable suspicion to justify the questions s/he asked, and (3) whether, in light of all the circumstances, the questions impermissibly prolonged the detention or changed its fundamental nature. Thus, if the question is reasonably related to the stop, there is no problem. If it is not, then the officer must have reasonable, articulable suspicion to justify the questions s/he asks. If s/he did not, the stop might still be legal if, in the light of all the circumstances and applying common sense, the questioning didn't impermissibly prolong or change the fundamental nature of the stop in the eyes of the person stopped.

Applying their newly designed test to the stop of McKinnon-Andrews, the Court decided as follows: Since the initial stop was for a traffic violation, there was articulable suspicion to support it, so it was legal. Even without a traffic violation, there are situations where a stop might also be justified in light of surrounding circumstances, keeping in mind that a trained police officer may draw conclusions from conduct that could seem unremarkable to an untrained observer, *State v. Pellicci*, 133 NH 523 (1990). A reasonable suspicion, though, must be more than a mere hunch, *State v. Berrocales*, 141 NH 262 (1996) and the facts must lead somewhere specific, and not just to the general sense that this person is probably a bad person who may have committed some sort of a crime, *State v. Vadnais*, 141 NH 68 (1996). There must be a particularized and objective basis for the stop, *State v. Roach*, 141 NH 64 (1996).

Here, the suspect approached Chief Harris first, instead of waiting for the officer to approach him. A reasonable officer could infer that the suspect didn't want him to view the inside of the car. Even facts that appear innocent one by one, when taken together and considered in light of the reasonable inferences that officers who are experienced in investigating drug crimes may draw, can constitute articulable suspicion of wrongdoing. A reasonable officer could have suspected that the car, which was driving into a restricted area where contraband was sometimes passed on to patients, might contain contraband, especially since the suspect's explanation for where he was going was inconsistent with the direction in which he was headed. These facts justified Chief Harris' question about whether there was anything in the car he should be concerned about. Reasonable suspicion can be based upon activity that is consistent with both guilty and innocent behavior, *State v. Turmel*, 150 NH 377 (2003), *U.S. v. Woodrum*, 202 F.3d.1 (1st Cir., 2000). Consequently, the evidence could be admitted in court, and the conviction stands.

Chief Justice Broderick wrote a "special concurrence," agreeing with the result but disagreeing on the reasons for upholding the stop. He would have upheld the stop and questioning because the officer did not have to ask McKinnon-Andrews for consent to search his car, since the defendant offered to let him search it without being asked. Where Chief Harris did not seek consent, although Judge Broderick believes the stop turned into an illegal detention when it was prolonged to ask about what might be in the car, there would be no object of deterring illegal police conduct to be realized here by suppressing the drug evidence, because the defendant himself invited the officer to search, *State v. Sczerbiak*, 148 NH 357 (2002).

But for this fact, Judge Broderick disagreed with his colleagues and would have suppressed the evidence. He thinks there is nothing inherently suspicious about exiting one's car to greet an officer, or to be lost, and a reasonable officer would not have concluded that there was. "While the perceptions of experienced officers are indeed entitled to deference, this deference should not be blind," Broderick wrote. Because he saw no reasonable connection between the stop for running a stop sign and the inference that the car might contain contraband, this Judge concluded that there was no reason to ask whether there was anything in the car that might concern the officer. This brought the Judge to the third prong of the new test – whether asking the question impermissibly prolonged the length of the stop. He felt that a reasonable motorist would have felt that the stop was being prolonged without sufficient cause, and the fundamental purpose of the stop was altered without a sufficient reason, as the question was not "facially innocuous" or merely a "few prosaic questions" about the driver's itinerary.

Having failed the three-part test in this Judge's mind, however, he said did not necessarily render the stop illegal. Now, the Court must consider the lapse in time between the unlawful detention and the consent to search, the presence of any intervening circumstances, and the purpose and flagrancy of the official misconduct, to determine whether the "taint of the unlawful detention was purged" before the consent to search was given.

Having gone through all these mental gymnastics, however, Judge Broderick then veered in the other direction and decided that since the defendant volunteered before being asked to have the officer search his vehicle, the search was not illegal.

U.S. SUPREME COURT DEVELOPMENTS

The United States Supreme Court recently decided the following cases of interest to law enforcement, under the Federal Constitution.

AFFIDAVIT DIDN'T CURE OMISSION IN SEARCH WARRANT

In *Groh v. Ramirez*, #02-811, decided February 24, 2004, the U.S. Supreme Court, in a split 5-2-2 decision, with Associate Justices Kennedy, Thomas, and Scalia and Chief Justice Rehnquist dissenting, ruled that the search of a home under a search warrant that failed on its face to describe in particular the items to be seized was unreasonable. The search was not cured by the fact that the federal agent who obtained and served the warrant submitted in the warrant affidavit a list of the items to be seized and restricted his search to the items on that list. The agent was also not entitled to qualified immunity from lawsuit in a civil rights suit arising out of the search. New Hampshire's Associate Justice David Souter voted with the majority against the officer.

The majority ruled that the 4th Amendment plainly states that, "no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." This requires particularity **in the warrant itself**, not merely in the supporting documents. The Court refused to decide at this point whether the warrant would have been valid if the warrant had cross-referenced the other document. The Court also refused to rule that even though the warrant was invalid, the search was otherwise reasonable. They said the agent did not merely omit a few items from the list or mis-describe some items, nor was the mistake the result of a mere typographical error. The warrant entirely omitted any description of the items to be seized.

The general rule against warrantless searches applies equally to searches under a warrant that lacks particularity. Unless the particular items described in the affidavit are listed in the warrant itself or at least incorporated by reference and the affidavit attached to the warrant, the homeowner has no assurance that his property is being lawfully searched or the items lawfully seized, the Court said.

Because the agent prepared the warrant himself, and any reasonably trained officer should be familiar with the 4th Amendment's particularity requirement, the agent could not rely on the fact that a judge issued the warrant to avoid being sued for an illegal search.

Justices Kennedy and Rehnquist, in their dissent, characterized the mistake as a clerical error and would have allowed the search and the qualified immunity. Justices Thomas and Scalia in their dissent said the search was not unreasonable and that technical compliance with the Warrants Clause should not be elevated above a reasonableness standard, and that the agent should have been given qualified immunity.

Protecting Electronics from Lightning

The Texas Electric Cooperative warns that even the best surge suppressors are no match for a direct lightning strike. It recommends unplugging computers, modems, fax machines, and other office equipment before a storm hits. If a storm comes up suddenly and you lose power, turn off all your equipment immediately because when the power comes back on, a voltage spike could damage the electronics. If you've been out during the storm and couldn't turn off or unplug equipment -- and you discover that it's not operating properly -- unplug it and wait five minutes to reconnect. That allows the excess electric charge to drain out so that the equipment can then work normally.

CALEA AGENCY SUPPORT FUND

At its 2003 Summer Conference, the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA®) approved the creation of the CALEA Agency Support Fund (CASF). The purpose of the CASF is to award grants to smaller agencies in law enforcement, public safety communications, and public safety training seeking *initial accreditation*.

At the 2004 Spring CALEA Conference, held in Pasadena, CA, the CASF Committee conducted a detailed review of all agencies that had applied. As a result, CALEA is pleased to announce that two agencies have been awarded a CASF grant for 2004:

- The Pismo Beach (CA) Police Dept., under Chief Joseph Cortez, with 34 employees
- The Millsboro (DE) Police Dept., under Chief John Murphy, with 12 employees

Under this grant program, eligible agencies will receive a grant for the administrative portion of their initial accreditation fees. Any law enforcement agency, public safety communications agency, or public safety training academy that meets the CALEA established criteria for participating in the accreditation programs is eligible to apply for this grant. The grants are primarily directed at agencies with *50 or less* full-time employees at the time of application. Agencies selected to receive a grant will be required to pay an application fee of $250 for law enforcement agencies and $200 for public safety communications agencies and public safety training academies.

Agencies applying for consideration must: (1) be seeking *initial* accreditation; and, (2) be legally constituted state, province, county, or local governmental entities with a mandated responsibility to

enforce laws, provide public safety communications services, or provide public safety training.

The Commission staff has developed a grant application package that can be ordered by calling CALEA Planning and Research Coordinator Reginald Newell, at (800) 368-3757, Ext. 39. This package can also be downloaded from CALEA's web site. Applications are accepted between September 1 and December 31 each year.

For more information about the CALEA Agency Support Fund, contact either Executive Director Sylvester Daughtry Jr. at (800) 368-3757, Ext. 31, or Planning and Research Coordinator Newell.

CHANGE IN RULES ON OFFICERS FLYING ARMED

The Transportation Security Administration (TSA) has changed its rules regarding allowing police officers on board commercial aircraft while armed.

Officers are required to provide advance notice to TSA through NLETS, with a message from their PD containing the officer's name, flight information, mission, and need to fly armed. TSA's ORI number is VATSA 1200. TSA will generate an immediate confirmation message to the officer, who should bring it with him or her to the airport, along with a badge or credential, a second form of government ID, a letter of authorization from their agency on official stationery, and a *Notice of Law Enforcement Officer Flying Armed* form obtained from the airline, and take it to the security checkpoint. The final decision is still up to the pilot as to whether the officer will be allowed on the plane armed.

SOME PD'S STILL NOT FOLLOWING GUN LICENSE RULES

Legislators and firearms rights advocates continue to complain that some towns and cities are still putting "their own spin" on RSA 159 pertaining to the issuance of licenses to carry loaded and concealed handguns.

Under New Hampshire law, a license is only required to carry the gun if it is both loaded and concealed, or loaded in a motor vehicle. No license is required to carry an unloaded, concealed handgun, or an unconcealed, loaded handgun. Issuing authorities have no right to request the license applicant to be fingerprinted or photographed, or to put a print or photo on the license. The application form that is used must be the one specified by the State Police. Although the issuing authority is allowed to ask for character references, there is no requirement that these references submit anything in writing. And, the issuing authority, generally the local Chief of Police, must issue or deny the license within the time frame specified by law.

Applicants who are denied a license may appeal to the District Court. If the Chief of Police, or other licensing authority, failed to follow the law during the process and the applicant prevails in court, the Chief, or other local issuing official, is personally liable for the applicant's legal expenses.

Licenses can be issued to residents of the town or city only – nonresidents of New Hampshire must apply to the Division of State Police if they wish to have a license to carry in New Hampshire. No town or city is allowed by the Legislature to pass any local ordinance restricting the right to carry firearms – only state laws apply.

Also, RSA 159:6-d requires New Hampshire to give full faith and credit reciprocity to nonresidents who have a license to carry in their home state, if their state gives the same privilege to residents of New Hampshire traveling in their state, as long as that person is carrying on his or her person their out-of-state license to carry. The License and Permit unit at the Division of State Police (271-3575) can answer questions as to which other states grant reciprocal privileges to New Hampshire.

SPEEDERS ON MY STREET!

Spring has sprung, and along with it come squealing tires, loud mufflers, speeders on residential streets and in neighborhoods, and an increase in calls for service to the police. In large cities and small towns, a common and frequent complaint deals with speeding in residential areas.

Now, the federal COPS office has weighed in on the problem, and given some specific guidance in terms of problem-oriented policing and its application to speed enforcement. They emphasize that P-O-P requires an understanding of basic problem-solving policing principles and methods; the ability to look at a problem in depth; a willingness to consider new ways of doing police business; an understanding of the value and limits of research knowledge; and a willingness to work with other agencies to find effective solutions to a problem.

The COPS office points out that speeding in residential areas causes five basic types of harm. It makes citizens fear for the safety of children playing outside or walking to and from school and other activities; it makes pedestrians and bicyclists fear for their own safety; it increases the risk of vehicle crashes; it increases the seriousness of injuries to other drivers, pedestrians and cyclists if they are struck by a vehicle; and it increases noise from engine acceleration and tire friction.

Speeding increases the risk of a crash because the driver is more likely to lose control of the vehicle; safety equipment, such as airbags and seatbelts, is less effective the higher the speed of the vehicle; the stopping distance multiplies with increased speed; the reaction time remains the same, but the distance before a driver reacts to a hazard multiplies; and the higher the speed, the more severe the crash. The force of impact on the human body increases by one-third at 35 mph as compared with 30 mph. Each one mile per hour reduction in average speeds translates to a roughly 5% reduction in vehicle crashes, according to a 1999 study by Corbett and Simon, two researchers. The National Highway Traffic Safety Administration says that speed is a contributing factor in one out of every eight crashes and about one-third of all fatal crashes. Most crashes occur in cities and towns, and most fatalities on more remote highways.

Besides speeding in neighborhoods, there are problems of aggressive driving and road rage, red-light running, DWI's and speeders on rural roads and on the open highway. Our culture seems to promote speeding. Car ads stress performance, drivers overestimate their own driving skill and underestimate their likelihood of crashing, and we even call these incidents "accidents" as though they were acts of God rather than caused by traffic violations or human error. People excuse speeding because they are late for an appointment, unaware of the speed limit, or just keeping up with other traffic. They make calculated decisions to speed, and it is up to the police to alter these calculations.

To determine the extent of a localized problem and how to correct it involves careful analysis of a number of facts. How many crashes are occurring and where? Are they crashes with other vehicles, pedestrians, or cyclists, or one-car incidents such as rollovers or running off the road? Are the two-car crashes sideswipes, rear-enders or head-ons? How serious are the injuries? What percentage of the crashes are speed-related? What other factors are involved, such as hurrying to beat a red light before it changes, or passing in a no-passing zone? How many complaints are you receiving, and what are people complaining about – actual crashes, fear of walking or riding, or noise? Are the most frequent offenders residents of the area, commuters using "cut-through" streets, or visitors? How fast are the worst offenders going? Which streets or blocks are the worst problem, and on what days and at what times? Are speed limits conspicuously posted and is the speed limit appropriate for conditions? Are the crashes occurring at intersections, on straight roads, or at curves? Are there road conditions that seem to invite people to speed, and if so, can these conditions be modified by the highway department?

You must also consider police visibility, or lack thereof. How often do your officers conduct speed enforcement in these areas now? How do they determine where to conduct it? Is it done as a result of speed or crash studies or by the seat of the pants? What is the tolerance range before citations are issued? What do most drivers assume the tolerance level is? If warnings are given in lieu of citations, are these written warnings rather than merely verbal in nature? Have you tried using a speed display board in the area? (These can be borrowed from the NH Highway Safety Agency if your community doesn't have one.)

Once you have a program in place, it is necessary to measure your effectiveness with "before and after" data. This can consist of surreptitious radar speed studies of the average speeds of vehicles taken at mid-block, the percentage of vehicles that are speeding, the percentage of drivers exceeding the posed limit by various amounts, the number of crashes, injuries, severity of injuries, and the level of citizen complaints, before and after. (Notice we didn't say the number of citations issued – that is only a gross measure of police performance levels – it's the number of contacts that count most, and the results of those contacts.) And, are your efforts in one neighborhood or area simply displacing the speeders to another location?

Here are some tactics that have worked well in other places. Responses need to be tailored to local circumstances, and based on reliable data. Often, several different responses need to be implemented at

once. Don't limit yourself to considering what the police can do – decide who else in the area shares responsibility for the problem and can help you better respond to it. Be sure to involve citizens, as well.

1. Try "traffic calming." This constitutes a wide range of road and environment design changes that make it more difficult to speed or make drivers believe they should slow down for safety. These may include having the highway department deliberately narrow the road, put in bends or curves, install "speed humps," add traffic deflections (chicanes) that narrow or redirect the roadway, mark the road with strips in such a way as to create the illusion that it is narrowing, add crosswalks that are raised or made from distinctive materials, planting roadside foliage, constructing traffic circles at intersections, building traffic islands to help pedestrians cross wide roads in stages, closing off residential neighborhoods with one-way streets or gateways, allowing parking on both sides of the street to narrow it, timing traffic signals so drivers traveling at legal speeds can go through more of them on green than faster-moving traffic, and adding mid-block build-outs by extending sidewalk areas into the road. Portland and Eugene, OR, and West Palm Beach and Sarasota, FL, are examples of communities that make extensive use of traffic calming measures. When considering these measures, be sure to take into consideration the special requirements of emergency response vehicles, and be sure you don't create additional hazards.

2. Post additional warnings signs and signals. Painting speed limits and SLOW on the road surface, along with more speed limit signs, can reduce speeds. Chevron-shaped or horizontal pavement markings ahead of a slow zone or hazard can cause drivers to slow down. Strobing signals, flashing signals and warning signs can increase voluntary compliance with speed limits, especially if they convey the **reason** drivers should slow down, such as a curve ahead, a school zone, or a construction work area. Simple "CAUTION/CHILDREN" signs have not been shown to be very effective.

3. Educate the public. Start a speeding awareness campaign to help change the social acceptability of speeding and create the illusion that there is more police activity than there is. Don't accuse folks, but instead convey facts and figures about the dangers of speeding and debunk the common myths about it. Campaigns developed at the grassroots level such as lawn signs, warning letters, and personal appeals can be more effective than mass advertising.

4. Inform people who complain what the average speeds are. People do not always estimate speed accurately when they complain. Cars seem to be moving faster to a pedestrian than to another motorist. When you monitor speeds, get back to the complainants and give them the results, as to what percentage of vehicles are actually being operated legally.

5. Enforce the laws. Long-term driving behavior changes depend on the perceived risk of being stopped by the police. Enforcement works best when drivers believe it will occur, it has meaningful costs to offenders, and it occurs on a regular, rather than a sporadic, basis.

6. Try a task force. If your department is short-handed and you do not have enough officers to do effective traffic enforcement, chances are the community next door has the same problem. Perhaps you can spare an officer for part of a shift once a week, and so can the three or four other surrounding communities, and maybe the State Police Troop Commander or the County Sheriff. Involve the Highway Enforcement Officers to deal with speeding and overweight commercial vehicles. Get together, analyze the problems that you have in common, and with everyone contributing an officer, you can form a "wolf pack" that moves from one location to another and gives the illusion that you are painting the streets black and white – and green – and brown, and that in your area, traffic enforcement is a serious business.

The above strategies are those that have proven to be most effective. Others, such as simply reducing speed limits, increasing fines, placing mid-block stop signs and installing speed bumps indiscriminately, are not as effective. Speed limits by themselves have little effect on the speeds most drivers go. They tend to react instead to vehicle noise, handling characteristics, perception of hazards, and perception of getting a ticket. Reducing the speed limit by five miles per hour has been shown to result in an actual reduction in average speeds of one mile per hour or less, according to National Highway Traffic Safety Administration studies. When speed limits are set at less than what most drivers consider a safe speed, they are more frequently violated, and disrespect for speed laws increases. Similar roads should have similar limits, so drivers do not feel that speed limits are set arbitrarily. Higher fines ultimately reach a point of diminishing returns, where increasing them more does not produce the desired result.

When mid-block stop signs are erected, the tendency of many drivers is to speed up between signs to make up for lost time, keeping average speeds still high, wasting fuel, and increasing acceleration noise. Speed bumps, as opposed to speed **humps**, can be hazardous and do not effectively reduce speeds. Rumble strips should only be used to keep people

from running off the road, and to warn of a hazardous condition ahead, such as a road that abruptly ends.

Problem-oriented policing may not be the solution to all of your problems, but it will be a good start.

200th Anniversary of the Lewis and Clark Expedition

On May 14, 1804, Meriwether Lewis and William Clark set sail from Wood River near St. Louis, Mo., beginning a more than two-year, 8,000-mile expedition. President Thomas Jefferson commissioned the trip to explore the land (and its natural resources and peoples) of the Louisiana Purchase bought in 1803.

Lewis and Clark were former Army officers. They assembled a crew of 45 to assist with their journey. The "Corps of Discovery" consisted mostly of military personnel and local boat men, but also included York, Clark's black slave, as well as a Newfoundland dog. On the way, they met a French Canadian and his Shoshoni wife, Sacagawea, who proved to be a valuable Indian guide and translator. They used three boats to facilitate river travel, but often had to barter with Indians for horses when land travel was necessary. To avoid starvation, they sometimes had to kill the horses for meat.

By November, they had traveled more than 1,500 miles to North Dakota, where they set up camp for the winter. By the following November, they reached the Pacific Ocean. They arrived back in St. Louis on September 23, 1806. Many historians believe their single most important discovery was that the Rocky Mountains prevented the connection of the Missouri and Columbia Rivers.

MODEL CITY PROVIDES REALISTIC TRAINING

Thanks to a grant from U.S. Attorney Thomas Colantuono, PSTC has acquired and put into place a "Model City" to provide realistic training scenarios for police officers to learn how to operate under the Incident Command System, as well as training in the planning and execution of raids and other police tactics.

The Incident Command System, or ICS, has been used by fire departments for years to deploy their forces at fires and hazardous materials incidents. It was developed by the U.S. Forest Service for fighting wildland fires. It fits nicely with the concept of Unified Command, where multiple agencies, such as police, fire and EMS, or multiple jurisdictions, such as police from neighboring communities, state police and sheriffs' offices, must work together to manage a large-scale incident, whether a terrorist attack, an evacuation, a large fire, or a riot.

Now, in order to become eligible for continued Homeland Security funds, the federal government has mandated that each jurisdiction put in place the ICS and provide training to its officers, firefighters and EMTs by next year.

Captain Jeffrey Noyes of the PSTC staff was trained to be an instructor in ICS at Emmitsburg, MD, prior to the arrival of the "Model City." Now that it is in use, those participating report being soaked in sweat and their pulses pounding in some cases, as they are put in charge of an incident and required to make on-the-spot decisions of how to deploy squads and individuals to keep the incident from getting worse.

Watch the PSTC training calendar and special announcements, and sign up your officers to attend this valuable training.

"CROSSING THE LINES" CONFERENCE COMING IN JUNE

"Crossing the Lines," a New England regional conference designed for federal, state and local victim service and law enforcement personnel who work with victims of federal crimes will be held June 9-10, 2004 at the Eagle Mountain House in Jackson, NH. The conference will provide practical information that will assist in identifying victims and addressing their needs. The interstate/ interagency nature of this conference offers a unique opportunity to develop the collaborative working relationships that are essential in the delivery of victims' rights and services.

The conference registration fee is $75 per person and lodging is available at additional cost. If you are unable to attend because of limited agency funds, you may qualify for a scholarship. On June 8, there will be a golf tournament for conference attendees who wish to participate. The cost for golf and cart is $30 per person, 9 holes. For more information, including how to register, please contact the Victim-Witness Coordinator at your U.S. Attorney's Office. The phone number of the New Hampshire office is (603) 225-1552.

IN MEMORIAM, " BILL" CAMPBELL

William F. Campbell died recently in the hospital at the age of 74. Bill retired from the Salem PD in 1993, after 23 years of service. He had been a K-9 officer with his dog, Caesar, and had twice been named Police Officer of the Year in Salem. He was a

U.S. Army veteran of the Korean War. Our condolences to his wife of 49 years, Margery, his two sons and daughters, and his many friends, colleagues and relatives.

JASON GRAVES SUCCUMBS TO CANCER AFTER VALIANT BATTLE

Lt. Jason R. Graves of the Chesterfield PD died recently at Dartmouth-Hitchcock Medical Center at the age of 34, after a long battle with a rare form of cancer. Jason began his police career with Hinsdale PD and had served with Chesterfield since 1996. He had earned awards for his service with the regional Drug Task Force, was a certified DRE, and had graduated from the Command Training Institute. Our condolences to his wife, Amy, his parents, and his many friends, relatives, and colleagues, who all respected him greatly.

IN MEMORIAM, PATRICIA COTTON JONSSON

Patricia Jonsson died on April 9 at the age of 57. She was one of the first females to be certified as a police officer for the Carroll County Sheriff's Department. She was also an original member of the Court Juvenile Committee for Carroll County and was on the staff of the NH Cadet Academy. Our condolences to her three daughters and other family members.

RETIREMENTS

Chief Donald Gross, Nashua PD
Chief Joseph Ciccarelli, Whitefield PD
Chief Charles Goodale, NH Hospital Campus Police
Lt. Paul Murphy, Concord PD
Sgt. Richard D'Auria, NH State Police

PROMOTIONS

Deputy Chief Timothy Hefferan, Nashua PD, to Chief
Sgt. Stephen Cass, Colebrook PD, to Chief
Sgt. Wayne Preve, Epsom PD, to Chief
Sgt. Cecil Cooper, Thornton PD, to Lieutenant
Detective Mark Bodanza, Weare PD, to Lieutenant
Sgt. Timothy Carpenter, New Ipswich PD, to Lieutenant
Officer Maureen Tessier, Manchester PD, to Sergeant
Officer Tara Tucker, Newmarket PD, to Master Detective
Officer Thomas Anderson, New London PD, to Detective
Cpl. Michael Shaw, NH Dept. Corrections, to Sergeant
CO Jamie Kreamer, NH Dept. Corrections, to Corporal
CO Joshua Ellis, NH Dept. Corrections, to Corporal
Officer Edward Andersen, New London PD, to Corporal
Officer Lori White, Milton PD, to Corporal
Officer Glendon Drolet, Northwood PD, to Corporal
Officer Joseph Caron, Colebrook PD, to Corporal

NH HERO AWARDS

Sixteen Granite State residents were recently honored during a ceremony sponsored by the *Union Leader* newspaper for heroic actions, including a number of NH police officers. Honored this year were Conservation Officers Brian Abrams and Samuel Sprague of NH Fish & Game, Officer Michael Dumont of Somersworth PD, Officer Sean Kilbreth of Bedford PD, Officers Michael Corl, Adam Dyer, and Matthew Laquerre of Londonderry PD, and Officer Dana Langton of Manchester PD.

A GREAT K-9 TEAM

Officer Timothy Keefe of the Dover Police Dept. and his golden retriever Norman placed 9th out of 93 teams in a nationwide competition in Mississippi last March. It was sponsored by the United States Police Canine Association, the largest police canine organization, which provides minimum standards for working police dogs. During the competition, Norman searched five cars and two rooms for drugs. Officer Keefe and Norman have worked as a team for two years and have been trained by the Working Dog Foundation. They frequently assist state and federal agencies, including the Coast Guard, the DEA, and the NH Drug Task Force.

NEW PROGRAM IN MANCHESTER

Manchester PD and the NH chapter of the Alzheimer's Association have started a new program to help bring a safe return to senior citizens suffering from Alzheimer's disease or dementia who have gone missing. Called "Just in Time", the program involves taking photos of seniors with these conditions and putting the photos in each cruiser's laptop computer.

Kentucky Derby Trivia

The Kentucky Derby, the first "jewel" in the Triple Crown of horse racing, is run the first Saturday in May, in Louisville, Ky. (The other two are the Preakness and the Belmont Stakes.) The first Kentucky Derby was run in 1875. The highest attendance at the race came in 1974, when 163,628 fans showed up. Every year, about 16 million people watch the race on television.

The term "derby" comes from Edward Stanley, 12th Earl of Derby, who founded a race for three-year-old horses in 1780. Odds-makers' favorites seldom win the Derby. Since 1980, the favored horse has won only once, in 2000, and only five favorites finished in the top three.

NEW SAFETY CENTER FOR PEMBROKE

Chief Wayne Cheney of Pembroke PD is happy to report that he and his staff have moved into their new quarters, which were built on Route 3 adjoining the remodeled fire station. Pembroke PD was located at a cramped “temporary” site for almost 30 years, so the new state-of-the-art building is a welcome change. An open house will be held some time this summer. To raise money for exercise equipment for the new building, the intrepid Pembroke officers conducted a very successful sale of Krispy Kreme™ donuts.

RAIN HOLDS OFF FOR POLICE MEMORIAL DAY

The predicted rain held off on the recent Police Memorial Day observance at the memorial location on the grounds of the Legislative Office Building in Concord, and the event was an unqualified success, with more individual law enforcement agencies represented than ever before.

Following the ceremony, Governor Craig Benson invited as many of the gathered officers as wished to accompany him to the Executive Council chambers, where he exercised his veto power over a bill that would have exempted 17-year-olds who murdered a police or corrections officer from the death penalty. Recalling the murder of Manchester Police Officer Ralph Miller, whose relatives were present at the ceremony to place a flower on the memorial in his honor, it was noted that Cleo Roy, the officer’s killer, was a teenager at the time.

Major General John Blair, the Adjutant General of the state and head of the NH National Guard, was the main speaker at the memorial event. He was invited because the Memorial Committee decided it was fitting to honor the service men and women serving in Iraq, many of whom are reservists and guardsmen and women who are police or corrections officers in civilian life.

Attorney General Peter Heed reported on an effort begun by his office and PSTC, after last year’s Police Memorial Day, to publish a memorial book that will contain a brief biography of each of the heroes whose names are inscribed on the wall of the memorial, together with the story of how they died. The book is nearly finished, and in addition to the book being printed, Governor Benson is making arrangements to have a computer kiosk installed at the memorial site, that will enable visitors to touch the name of any of the officers on a computer screen and call up their story. This effort even resulted in the addition of a previously unknown name to the wall of honor, that of a Deputy Sheriff Smith from Carroll County, who now is believed to be actually the first New Hampshire officer to die in the line of duty. Deputy Smith was leading a posse in pursuit of a horse thief when he was shot, and medical treatment not being in those days what it is today, he died sometime later from gangrene as a result of his injuries.

It was noted that a crack has developed on one of the walls of the memorial, and this will be repaired sometime this summer. In the meantime, the Memorial Committee is still seeking $25,000 in contributions to completely assure perpetual care for the memorial site in the future.

NEWS FROM THE NCMEC

The National Center for Missing & Exploited Children is pleased to announce that retired law enforcement officers from 16 states recently completed the rigorous training and certification necessary to become part of Project ALERT (America’s Law Enforcement Retiree Team).The program is endorsed by 16 major national law enforcement associations. As successful graduates of the program, the members are equipped with vital skills that can help law enforcement personnel in breaking both missing and exploited child cases and unsolved, long-term cases where additional assistance is needed.

Among the new Project ALERT members is Robert Pelio, former Chief of Jaffrey, NH PD who is now living in California. Members volunteer their time and expertise as unpaid consultants to help law enforcement with ongoing missing and exploited child investigations.

NCMEC is a nonprofit organization that works in cooperation with the US Department of Justice's Office of Juvenile Justice and Delinquency Prevention. Created in 1984, NCMEC has aided law enforcement officials in the search for more than 98,000 missing children. More than 82,000 children have been recovered as a result. For more information about Project ALERT, call 1-800-THE-LOST (843-5678), or visit the Center's web site at **www.missingkids.com**.

NO NEED TO HURRY ON SOME CALLS

Pennsylvania researchers recently conducted a study of a county-wide, single provider, private emergency medical response system that used 11 ambulances equipped with advanced life support systems and an annual volume of 14,000 calls a year, serving a population of 90,000 residents. They were trying to decide what influence rapid arrival at a trauma center had on the survival of patients, and see the extent to which "Code 3" transports outweighed the possible risks of speeding to the hospital.

This study was conducted at a time when the fatality rate for EMS personnel stands at 12.7 fatalities per 100,000 EM workers, compared with 14.2 for police, 16.5 for firefighters, and 5.0 for the average worker. Most of these fatalities are due to traffic crashes.

An experiment was worked out where 92% of a total of 1,625 patients were transported without lights and siren, and 8% went "Code 3." The researchers claimed that no adverse outcomes were attributable to the lack of Code 3 transport in these cases.

North Carolina researchers have compared lights and siren transport with non-lights and siren transport in an urban setting with a university medical center less than eight miles away. They found that lights and siren transport only averaged 43.5 seconds faster than non-lights and siren transport, and the clinical difference was significant only in rare instances. A similar study in Syracuse, NY found that lights and siren response reduced response time by an average of one minute, 46 seconds. Researchers in Minneapolis, MN studied 64 ambulance runs over a nine-month period and concluded that lights and siren reduced response time by an average of 3.02 minutes. Geographical differences, distances to hospitals and other variables obviously affected the outcomes in these different studies.

This information, gleaned from an article published by Brian E. Bledsoe in *EMS Magazine*, has useful connotations for the police community as well. For example, how critical is it to respond to a burglar alarm Code 3 at a location known for frequent false alarms? On the other hand, regardless of how quickly officers respond, once they arrive they should not be lulled into a false sense of security that this is "just another false alarm." Proper officer survival tactics are called for, not only because this is an opportunity to practice them and a good habit to get into, but also because the one time officers let down their guard is the time too many of us have been killed or injured by a hazard we didn't perceive.

LETTER TO THE EDITOR

Director Lohmann:

Granite State Credit Union is currently looking to sell its 1995 E350 Ford Conversion Van. The van was originally designed as a mobile credit union, complete with fax and data lines, a safe, and a conference table for three, along with many additional upgrades. The van has been well maintained and constantly housed in a heated garage and has only 30,000 miles on it. The features contained within the van could greatly benefit a police department in responses to crime scenes, accidents and SWAT events. In order for this van to be duplicated, it would cost in excess of $90,000. We are asking $28,000. If a department is currently seeking to invest in a van of this type, I can be reached at (603) 668-2221, ext. 3146.

Respectfully,

Richard H. Jordan
Corporate Security Rep., Granite State Credit Union

Bike Maintenance

This spring, give your bike a quick tune-up and clean-up before pedaling off.

- Wipe the bike down with a clean towel, including frame, brake, and gear components.
- If the bike is really dirty, use a spray bottle (filled with a water soluble cleaner, such as Simple Green) rather than a hose, because gushing water into the hubs and crankshaft can break down lubricants and lead to rust.
- Use a wire brush to clean the chain.
- Lubricate the front and rear shocks, the seat post, the hubs, and the bottom brackets.
- Inflate tires if necessary.
- If you have a painted bike, wax it and inspect the frame for cracks as you do so.
- Test the brakes in a little practice run before setting off.

CLASSES AT ROGER WILLIAMS UNIVERSITY

The Roger Williams University Justice System Training & Research Institute and the New England Association of Chief of Police, Inc. are sponsoring a "Crimes Against Children" seminar, *A Child is Missing*, on June 7, 2004 from 8:30 a.m. to 4:00 p.m. It will be held at the Baypoint Inn & Conference Center, 144 Anthony Road, Portsmouth, RI. The purpose of the seminar is to share information and programs available to law enforcement to help safeguard the vulnerable. A Child is Missing is a non-profit organization founded in 1996 for locating missing children, elderly and disabled during the first hours of disappearance. There is no charge for the training, but a breakfast, lunch and break fee of $30 is required, made payable to Roger Williams University, Justice System Training & Research Institute, One Old Ferry Road, Bristol, RI 02809. For more information, and to register, contact Claudia Corrigan, Expansion Director, at 1-888-875-2246 (8:30 a.m.-4:30 p.m. EST).

Also at Roger Williams University, a *Field Training & Evaluation Program* seminar is scheduled for June 14-18, 2004, from 8:30 a.m. to 4:30 p.m. This seminar is designed to provide formal training and practical information for personnel who will become Field Training Officers in their police department. The cost is $275, which includes textbook, materials, breaks and lunch. Lodging is available for out-of-state attendees. For more information, or to register, contact Denise Owens at (401) 254-3320 or Liz Campo at (401) 254-3731.

EMS FIRST RESPONDER TRAINING AT COLBY-SAWYER COLLEGE

The Department of Campus Safety at Colby-Sawyer College in New London, NH will be sponsoring a week-long EMS First Responder Course, which is authorized by the NH Bureau of EMS for certification as an American Red Cross Emergency Responder, and optional certification and licensure as a State of New Hampshire EMS First Responder. It will be held from July 25-31, 2004, from 8:00 a.m. until 10:00 p.m., with breaks for meals, etc. Room and board are available for students outside the New London area. Course costs are $300 for tuition, $50 for books, and $325 for optional room and board. Some of the topics to be covered are Legal & Ethical Issues of EMS, Communications and EMS Operations, Lifting and Moving Patients, Psychological Emergences, and much, much more. The deadline to sign up is June 15 and class size is limited to 24 participants. To register, or to obtain additional information, contact Officer John Reed at **jreed@colby-sawyer.edu.**

EXPOSITION AT MCINTOSH COLLEGE

The Criminal Justice Department of McIntosh College will sponsor and facilitate a community event entitled, "New England Region Emergency Preparedness Public Safety Exposition," on Saturday, June 12, 2004, from 8:00 a.m. until 2:00 p.m., on the grounds of McIntosh College, at the Design and Technology Center, 80 Rutland Street, Dover, NH. This event is open to the general public, free of charge, and all are welcome. The CJ Department encourages people from the area to attend, visit and interact with representatives from local, state and federal public safety agencies, medical aid and hospital facilities, disaster relief, victim assistance, and homeland security agencies to learn more about training, planning and programs to keep us all safe from danger, whether accidental, natural, environmental, or terrorist related.

HELP WANTED AT TILTON PD

The Tilton Police Dept. is seeking qualified applicants for the position of Full-Time Police Officer -- NH certification preferred. If uncertified, must have ability to pass a full background investigation and to successfully complete the NH PSTC Police Academy. Uncertified officers start at $14.93 per hour with full benefit package. Interested individuals must submit an application, no later than June 30, 2004, to the Tilton Police Dept., PO Box 292, Tilton, NH 03276. The Town of Tilton is an Equal Opportunity Employer.

WHITEFIELD PD SEEKING APPLICANTS

The Town of Whitefield, NH, is seeking qualified applicants who are interested in a career in law enforcement – certified police officers preferred. Physical agility test, psychological test, physical exam (including a drug/alcohol screen), polygraph exam, and background investigation (to include criminal record check) required. Submit resumes to: Whitefield Police Dept., 7 Jefferson Road, Whitefield, NH 03598. The Town of Whitefield is an Equal Opportunity Employer.

AN INVITATION . . . FROM THE POLICE ACADEMY STAFF

The 134th Police Academy will graduate on June 25, 2004. PSTC would like to once again put on a display of New Hampshire law enforcement equipment prior to the graduation ceremony. Last year we had many departments display equipment, and it was very well

received by the families and friends of the graduating class.

Graduation will still start at 7:00 PM. However, beginning at 5:00 PM, various law enforcement agencies will have staged static displays in the parking lot and around the grounds. We find that many of the recruits' friends and families, who attend graduation, have no idea of the diversity of NH Law Enforcement. This will permit those who arrive early enough to observe some of the "tools of the trade," and to gain some insight and information. We are looking for your command post vehicle, crime scene response vehicle, SWAT truck, EOD unit, motorcycles, mounted units, K-9, DARE units, boats, etc. – or anything else that you are proud of and want to show off. Please have them all clean and ready for display. They can be manned or unmanned – your choice.

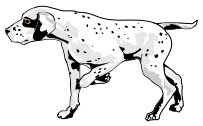
The NH Police Pipes & Drums Band will be present and will perform at 6:00 PM.

If you would like to have your agency represented, please contact Lt. Jeff Mullaney at 271-1149.

Running with Your Dog

Man's best friend is not always man's best running partner. Consider these recommendations by veterinarians before hitting the pavement with Fido:

- Although puppies have a lot of energy, don't go on long runs with them until they're fully grown (typically at two years of age) because high impact running could lead to sore joints or bone damage.
- The ideal running dog weighs 50 to 70 lbs. and has a short coat. Greyhounds, Labrador Retrievers, and Dobermans are good examples.
- Be careful in hot weather, especially if your dog is a long-hair breed like a Chow or Collie. Plan your route to allow for drinking stops and runs through puddles if you can.
- Check your dog's paws before and after every run for cuts or abrasions. Run on soft surfaces, such as dirt trails and grass fields.
- Keep the dog on a leash. A 6-foot leash gives the dog room to run with you.
- Make sure the dog is visible to traffic. At night, use a reflective dog harness, a reflective tape along the length of the leash, or flashing lights around the collar.



- Give your dog time to get into shape. Start with half a mile every other day and increase the distance by 10 percent each week. Give the dog a day off for every day of running.

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